

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

- - -

THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

UNITED STATES OF AMERICA,) CERTIFIED TRANSCRIPT
Plaintiff,)
vs.)
MICHAEL JOHN AVENATTI,) SACR-19-00061-JVS
Defendant.)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

June 1, 2020

SHARON A. SEFFENS, RPR
United States Courthouse
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17 ALSO PRESENT:

18 Michael Avenatti, Defendant

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08:45 1 SANTA ANA, CALIFORNIA; MONDAY, JUNE 1, 2020; 9:01 A.M.

08:45 2 (Per telephonic conference)

09:01 3 THE CLERK: Item No. 1, SACR-19-00061-JVS, United

09:01 4 States of America versus Michael John Avenatti.

09:01 5 Appearances for the government, please.

09:01 6 MR. ANDRE: Good morning. Julian Andre and Brett

09:01 7 Sagel on behalf of the United States.

09:01 8 THE CLERK: For the defendant.

09:01 9 MR. STEWARD: Dean Steward for Mr. Avenatti. We

09:01 10 have a waiver on file. I believe Mr. Avenatti is also

09:01 11 participating in this conference call.

09:01 12 THE COURT: Good morning. This is Judge Selna.

09:01 13 I need to make a couple of preliminary findings.

09:01 14 First, Mr. Avenatti needs to consent to conducting this

09:01 15 status conference via telephone conference.

09:01 16 THE DEFENDANT: Good morning, judge. I do, Your

09:01 17 Honor.

09:01 18 THE COURT: I find it's appropriate to proceed

09:01 19 telephonically given the interests of justice and pressing

09:01 20 forward in this case and considering the public health

09:01 21 factors. As of this weekend, there were more than 6,500

09:02 22 infections reported in Orange County. With the number

09:02 23 increasing, I believe the public's interest is adequately

09:02 24 recognized under the circumstances given that the docket

09:02 25 posted provides the teleconference number that allows any

09:02 1 member of the public to dial in and listen to this telephone
09:02 2 conference.

09:02 3 There are a number of topics to cover. I would
09:02 4 like to begin with the government's recent production of
09:02 5 approximately 600,000 pages of --

09:02 6 Mr. Steward, do you know anything further on that
09:02 7 topic?

09:02 8 MR. STEWARD: Only that the government seems to
09:02 9 switch back and forth between pages and documents. It's my
09:02 10 understanding a document could have 100 pages, 200 pages,
09:02 11 and the only relevant description is the page because we are
09:02 12 trying to determine how much time it's going to take the
09:03 13 defense. If we could speak about only pages, I think that
09:03 14 would be more helpful in talking about documents.

09:03 15 THE COURT: Did you receive the government's
09:03 16 letter on May 8, 2020, from Mr. Andre to you?

09:03 17 MR. STEWARD: Yes.

09:03 18 THE COURT: Doesn't the government point out that
09:03 19 there is substantial duplication of prior production?

09:03 20 MR. STEWARD: Yes.

09:03 21 THE COURT: Doesn't the government specifically
09:03 22 provide the Bates number for the duplicate documents?

09:03 23 MR. STEWARD: No. The material that we received
09:03 24 from the filter team is not Bate stamped.

09:03 25 THE COURT: I am looking at Mr. Andre's letter

09:04 1 which is attached as Exhibit 1 to the government's most
09:04 2 recent filing over the weekend. Paragraph two says:
09:04 3 "Please note that almost all of these discovery materials
09:04 4 USAO_00460670 to USAO_0112495 are duplicative of the server
09:04 5 materials that the privilege team previously produced to you
09:04 6 on March 13, 2020." Then it goes on to provide some
09:04 7 specific references.

09:04 8 In addressing this issue, do you not believe that
09:04 9 the material for the Court's consideration to be advised
09:04 10 that the production is duplicative?

09:04 11 MR. STEWARD: Yes, absolutely, but the problem is
09:04 12 I can't tell what is duplicated and what's not because of
09:05 13 the lack of Bates numbers on the filter team material.

09:05 14 THE COURT: Even so, I believe it's material to my
09:05 15 consideration to assess this problem to note that there
09:05 16 is -- I'm troubled by the fact that no where in your filing
09:05 17 did you mention that in your status report updated May 27.

09:05 18 Sir, I expect a greater degree of candor going
09:05 19 forward. That's a material fact that should have been
09:05 20 presented to the Court along with your concerns about the
09:05 21 production.

09:05 22 MR. STEWARD: Understood, Your Honor.

09:05 23 THE DEFENDANT: It was included on Page 4,
09:05 24 Footnote 5, actually.

09:05 25 THE COURT: Who is that speaking?

09:05 1 MR. STEWARD: That was my client, Your Honor.
09:05 2 That's the disadvantage of doing this by telephone. He
09:06 3 can't whisper in my ear. But he is correct. If the Court
09:06 4 would take a look at Page 4, Footnote 5, of my
09:06 5 teleconference filing.

09:06 6 THE COURT: Okay.

09:06 7 Remarks.

09:06 8 THE DEFENDANT: Your Honor --

09:06 9 THE COURT: Mr. Avenatti, you don't get to speak.

09:06 10 THE DEFENDANT: Understood, Your Honor. Sorry
09:06 11 about that.

09:06 12 THE COURT: In the order I sent out, it provided
09:06 13 some thoughts for this hearing and raised the possibility of
09:06 14 providing Mr. Avenatti a disabled laptop with the discovery
09:06 15 on it. I don't see why that can't be done and can't be done
09:06 16 promptly.

09:06 17 MR. STEWARD: This is Mr. Steward.

09:06 18 Your Honor, I agree with the understanding that
09:06 19 it's -- there's too much to load on just one laptop. I
09:07 20 think what we have to do is give him the disks and hard
09:07 21 drives and that sort of thing. But the bottom line is I
09:07 22 agree with that.

09:07 23 MR. ANDRE: This is Julian Andre on behalf of the
09:07 24 U.S. Attorney's Office.

09:07 25 With respect to a computer, we have no objection

09:07 1 to Mr. Avenatti being provided a computer. Had this been
09:07 2 raised to us weeks ago, we would have set it up. We have no
09:07 3 objection to Mr. Steward providing the defendant a disabled
09:07 4 computer. I think the only thing that we would suggest is
09:07 5 that Pretrial Services be advised of a computer and what
09:07 6 computer he will be using and at least be given an
09:07 7 opportunity to confirm that the computer has been disabled.

09:07 8 THE COURT: I would expect you to meet and confer
09:07 9 with Mr. Steward with regard to a computer and whatever
09:07 10 external devices you are going to need to have agreed
09:08 11 material loaded so that everybody knows what he gets and
09:08 12 what it's on.

09:08 13 MR. STEWARD: Yes, Your Honor, I'll do that.
09:08 14 Pretrial Services is not in a position to go out to his
09:08 15 place of residence at this time. For example, they did the
09:08 16 walk-through with a computer via video. But the Court's
09:08 17 suggestion is good one, and we can certainly do that.

09:08 18 THE COURT: I want a report by Friday how this is
09:08 19 going to be accomplished, and I expect this to be
09:08 20 accomplished in no less than seven days from today.

09:08 21 MR. ANDRE: Your Honor, Julian Andre.

09:08 22 May I briefly back up and respond to a couple of
09:08 23 points Mr. Steward raised regarding the discovery?

09:08 24 THE COURT: Go ahead.

09:08 25 MR. ANDRE: First, with respect to the Privilege

09:08 1 Review Team's production, obviously I never seen it, but our
09:08 2 understanding is that our start team 2020 production was in
09:09 3 fact Bate stamped. It was produced with database load
09:09 4 files. It would be fully searchable. Our understanding is
09:09 5 those documents were in fact Bates labeled and that they
09:09 6 should be able to in addition to the information we provided
09:09 7 quickly confirm that the information we provided was
09:09 8 accurate.

09:09 9 The other issue Mr. Steward mentioned is the
09:09 10 difference between pages and documents. The reason why we
09:09 11 focused on the number of documents is pretty simple. What a
09:09 12 lot of these materials included are all the litigation
09:09 13 documents for all of these cases. For example, if a witness
09:09 14 was deposed in connection with one of the three cases of
09:09 15 victims, that deposition is going to essentially be included
09:09 16 in the government materials. So it may be a 200-page
09:10 17 document, but it takes only one second to realize that
09:10 18 position of an expert witness is not relevant to the
09:10 19 allegations.

09:10 20 THE COURT: Okay. I want to move on to the IRS
09:10 21 terminal.

09:10 22 Mr. Steward, tell me physically what the process
09:10 23 was when you went to the IRS Office.

09:10 24 MR. STEWARD: We set up an appointment with the
09:10 25 filter team, and we met them at the Federal Building on

09:10 1 Los Angeles Street. They accompanied us up to the IRS
09:10 2 offices where there was a technical person from IRS. I
09:10 3 understand he is the only one in the district. What we did
09:10 4 was give him a list of e-mails -- people's names that we
09:11 5 wanted him to search. He did that, and after a half hour or
09:11 6 45 minutes, it came he came up with all of these e-mails
09:11 7 connected to the names of relevant people in the case, and
09:11 8 he then put them on a disk for us. So that was the first
09:11 9 time we did it.

09:11 10 The second time former counsel, Tom Warren, was
09:11 11 with him or his associate, and I don't know how they did it
09:11 12 the second time, but that's the way we did it.

09:11 13 THE COURT: Why can't that same process be carried
09:11 14 out remotely either by a teleconference or a zoom
09:11 15 conference? You're in touch with the IRS agent or this
09:11 16 person that works for them, this specialist. Give him the
09:11 17 search terms, and he produces a disk for you. Why can't
09:11 18 that be done?

09:11 19 MR. STEWARD: Well, we can do that, but part of
09:11 20 the problem is follow-up on it. In other words, we have got
09:12 21 to review it and then see what the follow-up would be.
09:12 22 Another part of the problem is I don't know whether they are
09:12 23 even around. I know most of the U.S. Attorneys are working
09:12 24 for home. I don't know whether the IRS or filter team are.
09:12 25 It's certainly something we can inquire about.

09:12 1 THE COURT: Well, I will ask Mr. Andre to gather
09:12 2 those facts and come back to you. You may have to review
09:12 3 what the search produces, but why can't the process of
09:12 4 providing a search term, getting the results, and then after
09:12 5 providing you a disk with those results go forward?

09:12 6 MR. STEWARD: I think we should absolutely try
09:12 7 that. I don't know whether there are other problems that I
09:12 8 can't anticipate, but we can certainly give that a shot and
09:12 9 see what happens.

09:12 10 THE COURT: Okay. In the report coming back to me
09:12 11 on Friday with regard to the laptop, I'd like you also to
09:12 12 address providing remote access to the IRS terminal.

09:13 13 MR. ANDRE: Your Honor, we have concerns at this
09:13 14 point about their request that they be given kind of free
09:13 15 reign to the EA server. Obviously if they have reasonable
09:13 16 requests, we're happy to discuss that and accommodate them
09:13 17 to the best of our ability. But what they are asking us to
09:13 18 do is to recreate a process that was in place nine months
09:13 19 ago for that. I don't believe they demonstrated that that
09:13 20 is even necessary at this point.

09:14 21 THE COURT: Mr. Andre, you're going to give access
09:14 22 to that terminal. A sufficient showing has been made. You
09:14 23 just need to put in place the tools to allow them to do
09:14 24 that.

09:14 25 MR. SAGEL: This is Brett Sagel.

09:14 1 Our concern is Mr. Steward keeps complaining about
09:14 2 duplicative or numerous documents. Anything he is going to
09:14 3 have access to in that terminal -- which we're not opposing
09:14 4 what you're saying, but what he should look at is the
09:14 5 e-mails -- the references that he has in his 600,000 pages
09:14 6 of material that were produced from that server first to see
09:14 7 what he is missing.

09:14 8 The problem is when he was given access to those
09:14 9 computers and those devices last September and October he
09:15 10 did not have any of that produced in discovery. That's why
09:15 11 we made it available for him. The government went to great
09:15 12 expense and resources. That's not the case right now.
09:15 13 Right now he does have all of that. He hasn't even
09:15 14 mentioned one thing he thinks he is missing. I'm not sure
09:15 15 what he has even looked at to know what he thinks he's
09:15 16 missing.

09:15 17 From someone who has looked through most of what's
09:15 18 there, it's pretty voluminous, and it's hard to believe what
09:15 19 else out is out there. He has got the entire victim folders
09:15 20 that were on the share drives, as well as all the e-mails
09:15 21 between all those individuals.

09:15 22 THE COURT: Well, Mr. Steward, you're going to
09:15 23 have to make a good-faith effort to analyze what you have
09:15 24 and what you need rather than reinventing a complete wheel
09:15 25 through the IRS terminal.

09:15 1 MR. STEWARD: I will do that, Your Honor.

09:15 2 THE COURT: Okay. Let's talk about a trial date.
09:16 3 The government didn't address that issue in its response.

09:16 4 MR. ANDRE: Your Honor, we're happy to do it now.
09:16 5 This is Julian Andre.

09:16 6 Our position is that we -- we obviously recognize
09:16 7 COVID-19 is an issue in this district and across the country
09:16 8 and that a further continuance is necessary at this point
09:16 9 and could be necessary again in the future. Our position is
09:16 10 that right now COVID-19 is a reasonable basis for a
09:16 11 continuance in this case.

09:16 12 THE COURT: The assumption is that the existence
09:16 13 of COVID-19 has had no impact on the defense's ability to
09:16 14 prepare. That said --

09:16 15 MR. ANDRE: Your Honor, I understand the point the
09:16 16 Court is raising. That being said, the Court has already
09:17 17 fairly recently continued the trial three months. We would
09:17 18 request that the Court set the earliest trial date that the
09:17 19 Court believes it may be able to hold a criminal jury trial.
09:17 20 I think the Court might have a better sense of that. We
09:17 21 were thinking September 15, which would be one month.
09:17 22 Obviously we recognize that could change again.

09:17 23 We strongly oppose what they have requested. They
09:17 24 have given two options, either February 2021 or just vacate
09:17 25 the date and wait until the end of August, which would have

effectively the same impact as waiting until 2021.

This case has been pending for 14 months. We understand what COVID-19 does. It's very challenging. It may well create challenges as far as preparation. It creates challenges for the government, too. We bear the burden here, and we are dealing with the same challenges. But this case has been pending for 14 months. There's plenty that can be done to get ready for trial whether it's motion practice or other things. We would request the Court continue it a month at this point.

Then the other last point I would mention is that there are victims in this case, and those victims have statutory rights to proceedings without unnecessary delay. They have been waiting for their day in court a long time now, and to just continue this indefinitely would not be consistent with their rights or the public interests.

So our proposal would be the Court set this for the next available -- the first possible date the Court believes we may be able to hold a trial, and that additional time will hopefully also provide the defendant whatever additional time he needs to resolve any issues that have been caused by COVID-19.

THE COURT: I'm setting the matter down for a jury trial December 8, 2020, at 8:30 a.m. We'll do the final status conference November 23 at 9:00 a.m.

09:19 1 No one can predict with certainty that there is
09:19 2 probably a high likelihood that we will be able to proceed
09:19 3 in a manner that addresses everyone's concerns about the
09:19 4 logistics and mechanics of a trial. That's obviously
09:19 5 subject to further change in the conditions in the
09:19 6 United States, subject to further guidance from the Ninth
09:19 7 Circuit which has provided some further guidance from the
09:19 8 United States Judicial Conference and the Administrative
09:20 9 Office of the Courts.

09:20 10 I think we should put the case on a track that
09:20 11 gets that done. That means people need to get down to
09:20 12 business. That's why I want promptly in place the disabled
09:20 13 laptop for Mr. Avenatti and a scheme to pursue the IRS
09:20 14 terminal. So I will look for your report on those two
09:20 15 topics by the end of the week.

09:20 16 I would like to set another 9:00 a.m. next Monday
09:20 17 if that's convenient for everybody.

09:20 18 MR. ANDRE: 9:00 a.m. on Monday is fine for the
09:20 19 government.

09:20 20 THE COURT: Mr. Steward.

09:20 21 MR. STEWARD: Same for me, Your Honor, and my
09:20 22 client.

09:20 23 THE COURT: Okay.

09:20 24 MR. ANDRE: At this point, would the Court be
09:20 25 willing to take a waiver as to the Speedy Trial Act from the

09:20 1 defendant?

09:20 2 THE COURT: Oh, yes. I mean, either -- if I don't
09:21 3 see a written waiver within seven days, advise me that it's
09:21 4 not coming, and I'll make the required judicial findings
09:21 5 under the Speedy Trial Act to continue the trial to that
09:21 6 date.

09:21 7 MR. STEWARD: That's fine.

09:21 8 MR. ANDRE: There is one other issue I would like
09:21 9 to flag. This is Julian Andre. And it may be more
09:21 10 appropriate to save this to discuss next Monday.

09:21 11 There obviously have been raised some issues with
09:21 12 respect to counsel. Our view is that those issues need to
09:21 13 be resolved immediately, particularly given that -- although
09:21 14 there's some complications with respect to COVID-19, many of
09:21 15 the issues regarding counsel have been the same since last
09:21 16 July or last August. We would request that those issues be
09:21 17 addressed next Monday. We don't want to be three or four
09:21 18 months down the road and be dealing with the same thing
09:21 19 again and again.

09:22 20 THE COURT: Well, one of the items I noted in the
09:22 21 order I sent out was a date certain for the parties to
09:22 22 provide me the legal research as to the effect of a party
09:22 23 having but failing to apply resources in terms of a speedy
09:22 24 trial and other rights. So I would ask that I get that
09:22 25 memorandum by Friday separately from each side, and we will

1 discuss that Monday as well.

2 MR. ANDRE: Thank you very much.

3 MR. STEWARD: That's fine.

4 THE COURT: Mr. Steward, you give some indication
5 in your supplement, your status report, that additional
6 assistance is coming on. You can address that as well in
7 whatever you put in by Friday.

8 MR. STEWARD: I will do that, Your Honor.

9 THE COURT: Okay. With regard to your status
10 report, Mr. Steward, the local rules limit you to 25 pages.
11 I realize that when counsel enter briefs in a conventional
12 fashion it's about 28 lines. Perhaps the clock could be
13 alleviated if you did that. I expect you to file conforming
14 briefs. The court's resources are limited, and they're
15 tasked in a special way as everyone is tasked in performing
16 their role.

17 I would ask you to address relevant topics, that
18 is, relevant to me managing this case and the difficulties
19 which are presented going forward. Much of your brief
20 recounted Mr. Avenatti's experiences at MCC. While I'm sure
21 you have accurately described them, they don't assist me in
22 addressing case management issues in this case. I would ask
23 you going forward to concentrate on what we are about here
24 and present me complete but net expressions of your opinions
25 on the issues.

09:24 1 MR. STEWARD: Understood, Your Honor. The only
09:24 2 reason we included all that was Mr. Andre's statement that
09:24 3 my client would have had access to discovery in this case
09:24 4 while he was at the MCC. We were just trying to show that
09:24 5 that's not the case. The Court is very familiar with my
09:24 6 writing. I am usually very succinct.

09:24 7 THE COURT: I believe that's all the topics I want
09:24 8 to cover.

09:24 9 Any other matters anyone would like to address?

09:24 10 MR. ANDRE: This is Julian Andre.

09:24 11 Currently the motion deadline for this case was
09:24 12 actually on Monday. Our strong preference is that motions
09:24 13 continue forward. I understand move that off a couple of
09:25 14 weeks. But our view is motions should continue to proceed,
09:25 15 at least any motions that can be filed as soon as possible.

09:25 16 MR. STEWARD: Dean Steward.

09:25 17 The only problem is that -- well, a number of
09:25 18 problems, but the main problem is that motions are almost
09:25 19 always dependent on a thorough review of the discovery. I'm
09:25 20 not going to beat the horse any further, but we still have
09:25 21 an awful lot of work to do. A motion, for example, like
09:25 22 severance counts, which I intend to bring -- certainly we
09:25 23 can bring that at any time. But just about any other
09:25 24 motion -- for example, suppression motions are bound to
09:25 25 what's in the discovery, and we certainly have not completed

our review.

THE COURT: All dates will be continued commensurate with the trial date which I have announced based on the intervals of the existing order.

MR. ANDRE: If the Court is going to keep the existing schedule in place and just back everything up, would the Court like the government to file a proposed order?

THE COURT: Yes. Meet and confer and put in a stip waiving time or otherwise provide me with an order, yes.

MR. ANDRE: Thank you, Your Honor.

MR. STEWARD: That's fine, Your Honor.

THE COURT: Okay, thank you very much. We will visit with you again at 9:00 a.m. on Monday.

(Whereupon, the proceedings were concluded.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: June 5, 2020

/s/ Sharon A. Seffens 6/5/20

SHARON A. SEFFENS, U.S. COURT REPORTER